



Fw: Energy-In-Depth (12-30) What Is EPA's Philly Office Doing in Dimock?

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What Is EPA's Philly Office Doing in Dimock?

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by Tom



Does the Federal government recognize any limits on its authority? Students of U.S. politics can easily tell you there are such limits. In fact, if a federal agency has no authority as directly granted by Congress then it can't act. This small, but very important, fact seems to be lost on the U.S. EPA given recent correspondence from the agency's Philadelphia regional office. Otherwise, one must assume that U.S. EPA headquarters has little oversight or control of its regional offices and they are merely independent fiefdoms on missions dictated by the political philosophies of their individual directors (more after the jump).



The regional office (region 3), citing no authority whatsoever, and with total disregard for the state agency with actual regulatory authority, has inserted itself into the Dimock controversy. It became involved at the request of litigants in Dimock. Its initial effort was a review of water testing data which prompted the agency to declare the data did not indicate the litigants water represented a threat to human health. Predictably, there was backlash from this truth telling. Environmental charlatans such as Josh Fox and litigants complained bitterly. Now it appears EPA is working outside of its authority to appease the litigants, and their Hollywood supporters, in what seems to be an attempt to deliver a different message that is more reflective of the agenda of anti-natural gas development interests.

This especially troublesome as the Clean Water Act (CWA), the law which provides the U.S. EPA with authority over the nation's waters, is a law which delegates this authority to state regulatory agencies. In this case, that agency is the Pennsylvania Department of Environmental Protection (PA DEP). According to the law, PA DEP is the primary regulatory authority for implementation of the CWA in Pennsylvania. In fact, except for matters that transcend state borders, the U.S. EPA's regulatory authority in Pennsylvania under the CWA is limited to implementation of the act's pretreatment program for Publicly Owned Treatment Works, no more, no less. As one considers this situation, it is important to keep in mind that not only is EPA becoming involved in an ongoing private legal battle outside of its authority, but it is doing so at the same time the agency conducts a so-called "independent" study to examine the impacts of natural gas development on water resources. Yet another important fact to keep in mind, is that U.S. EPA utilized a known natural gas "fractivist" and member of the Gas Drilling Awareness Coalition to solicit participants for the portion of the study taking place in Dimock.

Of course this isn't a new phenomenon. The EPA's Philadelphia regional office, has a recent history of putting politics before science, and now it seems to be continuing this trend as it goes well beyond a simple data review to seemingly launching an unauthorized investigation of Dimock. This comes after PA DEP and the state's Environmental Appeals Board have ruled that the litigants water is safe and the crises they are manufacturing does not exist. With the e-mail EPA sent to Dimock residents this week it appears that region 3 is more interested in the opinions of Hollywood actors like Josh Fox and Mark Ruffalo than sound science, regulatory determination and judicial review:

Dear Dimock Residents:

On behalf of Trish Taylor, I'm providing you with an update and attached fact sheet

about EPA's activities in Dimock, PA. Please continue to address any questions or concerns to Trish and she will be happy to follow up with you when she returns to the office. Thank you.

EPA Update:

Earlier data reviewed by EPA in November 2011 indicated that private well water posed no immediate health risks. We also said that we would continue to review the latest data and keep you informed. EPA has recently received and reviewed hundreds of pages of the latest Cabot data supplied by the residents. While EPA is not in a position to make any conclusions about the data we have in hand because there are gaps, we believe that additional information is needed to better understand the situation in Dimock and respond appropriately. Therefore, EPA is considering next steps including conducting some sampling of well water in the area.

EPA staff plan to be in Dimock beginning today to survey residents to begin filling these information gaps about their drinking water supply and will share next steps when we have more complete information. We will keep you informed of our next steps as soon as possible.

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Sincerely,

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“EPA staff plan to be in Dimock today” - are you kidding? What more does anyone need to know about the hurried nature of this effort? And, how is it that Philadelphia EPA had the data to draw a conclusion before, but now doesn't after receiving “hundreds of pages” of additional data? And let's not forget the litigants would not participate in the national hydraulic fracturing study, which we should mention included water sampling. Three weeks after declining participation the litigants attorney turns around and solicits the EPA's Philadelphia office to investigate Dimock.

It's not difficult to discern what's going on here. Seems region 3 is looking for an excuse to take back the truth that Dimock water does not pose threat to human health. The "fact sheet" below paints a pretty clear picture of what's to come:

...

This fact sheet is anything but facts, of course. Rather, it's a solicitation of complaints. What's missing here is a citation of authority and an explanation of why EPA is duplicating what the DEP has been doing for years. There is also no explanation for the hurried effort. Instead, there is a statement about "filing information gaps." This is the superfluous language of politics, not the language of science. More to the point, since when are "information gaps" filled by homeowner surveys rather than objective water tests conducted by independent third parties? Are we supposed to take the word of litigants looking for legal payoffs over hard data objectively collected and analyzed by state certified water testing laboratories?

A simple review of the volume of material made publicly available on the Cabot website (those "hundreds of pages") knows full well there is an extensive body of data available. The only gaps are those resulting from the refusal of the Sautners, et al to allow regular testing (as required by the Consent Decree). As one of the individuals receiving this material has told the EPA:

We won't be available on Friday. Everyone has been offered treatment systems at no charge. None of the litigants have taken them. If you are looking for test results then maybe you should be requesting those of the litigants. The litigants have made numerous claims about the contaminants in their water yet, to our knowledge, no one has ever seen any test results proving any of this. If they want to take up your time then you should ask them to provide you with the test results first. In our opinion the treatment system works. Cabot has numerous tests to prove it and you are welcome to look at them. If you would like to sample our water yourself that is fine too. In order to sample our water you would need to provide us with some notice in advance, not call and leave a message on the answering machine and send an email the day you'd like to do it. If the treatment systems work for so many of us then possibly you should suggest to the litigants that they take one and try it for themselves.

This is rather good advice which would also save U.S. taxpayer's funds that would otherwise be spent on a needless expense outside of EPA's authority. However, I truly doubt the Philadelphia office will take it. Rather, U.S. EPA now appears to be on a mission to reverse its earlier call using what appears to be largely anecdotal evidence from an unscientific homeowner survey as opposed to the hard data which led to the original conclusion levied by the agency.

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